IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

OP.No. 26624 of 2000(T)

PETITIONER:

P.T. JOY S/o THARIAN, AGED 57 YEARS,
RTD. CIVIL SURGEON, RESIDING AT PUTHUSSERY HOUSE
(BEHIND SBT) NORTH NADA, KODUNGALLOOR

BY ADV. SRI.M.R.RAJENDRAN NAIR (SR.)
SRI.R.SREERAJ
SRI.HARIRAJ
SRI.NIDHI BALACHANDRAN

RESPONDENTS:
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1. STATE OF KERALA REPRESENTED BY THE SECRETARY
TO GOVERNMENT OF KERALA, HEALTH & FAMILY
WELFARE (A) DEPARTMENT, THIRUVANANTHAPURAM
2. DIRECTOROF HEALTH SERVICE, GOVERNMENT OF
KERALA, THIRUVANANTHAPURAM

BY GOVT PLEADER SRI K SANDESH RAJA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

O. P. No 26624 of 2000

Dated: 20th June 2007

JUDGMENT

Radhakrishnan, J.

Writ petition is preferred seeking a writ of certiorari to quash Exts. P4 and P1 to the extent it imposes a condition that the leave without allowance availed by the petitioner will not be reckoned for pensionary benefits. Petitioner has also sought for a direction to the first respondent to refix his pension by reckoning the period of leave without allowance and to disburse the arrears with interest. Ext. P1 is an order passed by the Government on 5.4.1995 granting leave without allowance on production of medical certificate for the period from 14.12.1990 to 23.04.1992. Leave without allowance from 24.04.1992 to 23.06.1994 was granted on personal ground on condition that it will not count for any service benefits including pension. Above mentioned order was challenged by the petitioner in O.P. No 14717 of 1999.

2. Learned single judge of this court did not interfere with the

said order. It was submitted that the petitioner had submitted a representation before;the Government in the light of the decision in Elizabeth v. Director of Health Services (1998 (2) K.L.T Short Notes 67). Later, Government considered the representation in the light of the above mentioned decision and rejected the same as per Ext. P4. Government took the view that the principle laid down by this court in Elizabeth's case, supra is not applicable to the case of the petitioner since that was a case where the petitioner had applied for leave without allowances on medical grounds but was granted on personal grounds. In such circumstances, Government felt that the application should have been considered on medical grounds. So far as the present case is concerned, petitioner had applied for leave without allowance on personal ground but that was granted by the Government on medical ground. That was for the period from 14.12.1990 to 23.04.1992. From 24.04.1992 to 23.06.1994 there is nothing to show that leave was sought on medical grounds. In such circumstances this period was reckoned as leave without allowance but this period would not count for any service benefits including pension. Government rejected the representation placing reliance on rule 26 Part III K.S.R wherein it is stated that leave without allowance

taken otherwise than on medical certificate will not count for increment and pension. There is nothing to show that petitioner hade made an application for leave without allowance on medical grounds with supporting materials. In such circumstances we find no infirmity in Ext P4 to be interfered by us under Article 226 of the Constitution of India. Original Petition lacks merits and the same would stand dismissed. We therefore find it unnecessary to consider the question referred by the learned single judge in the facts and circumstances of the case.

SD/-

K.S. RADHAKRISHNAN
Judge

SD/-

ANTONY DOMINIC
Judge

20/06/2007
en

[TRUE COPY]

APPENDIX

Petitioner's exhibits:
Ext P1 - True copy of G.O.(Rt) No 1165/95/H&FWD dated 5.4.1995 issued by the first respondent
Ext P2 - True copy of representation dated 1.2.1999 before the first respondent
Ext. P3 - True copy of the judgment dated 28.2.2000 in OP 14717/99 of this court
Ext P4 - True copy of letter No 18282/E3/2000/H&FWD dated 21.8.2000 issued by first respondent

[true copy]